

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

WILLIAM HECKEL, and	:	
WANDA HECKEL, on behalf	:	
of their minor daughter,	:	
RACHEL HECKEL,	:	
Plaintiffs,	:	
	:	
v.	:	Docket No. 1:04-cv-30
	:	
KATHRYN RAGONESE,	:	
Defendant	:	
_____	:	

RULING ON PLAINTIFFS' MOTION FOR REMAND AND REQUEST FOR  
HEARING  
(Paper 3)

Plaintiffs filed this action in Vermont Superior Court, and Defendant subsequently filed a notice of removal, citing diversity of citizenship. Plaintiffs filed their "Opposition Defendant's Notice of Removal and Request for Remand and Request for Hearing" (Paper 3), which the Court construes as a Motion to Remand. For the reasons discussed below, Plaintiffs' Motion is GRANTED.

DISCUSSION

"On a motion to remand, the party seeking to sustain the removal, not the party seeking remand, bears the burden of demonstrating removal was proper." Hodges v. Demchuk, 866 F. Supp. 730, 732 (S.D.N.Y. 1994). "Unless that burden is met, the case must be remanded back to state court." Bellido-Sullivan v. American Int'l Group, Inc., 123 F. Supp. 2d 161,

163 (S.D.N.Y. 2000). "At this stage, therefore, the party seeking remand is presumed to be entitled to it unless the removing party can demonstrate otherwise." Id.

Defendant invokes diversity of citizenship as a basis for removal under 28 U.S.C. § 1441. (See Paper 4 at 2) Defendant, however, misreads the federal removal provisions, particularly 28 U.S.C. § 1441(b). An action which does not involve a federal question may be removed to federal court "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which the action is brought." 28 U.S.C. § 1441(b); see also Caterpillar Inc. V. Lewis, 519 U.S. 61, 68 (1996) ("When a plaintiff files in state court a civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant or defendants may remove the action to federal court *provided that no defendant is a citizen of the State in which such action is brought*") (emphasis added) (internal citations omitted); Handelsman v. Village Green Assocs., 213 F. 3d 48, 50 n. 2 (2d Cir. 2000) (noting that New York citizen sued in New York state court "was not entitled to remove to federal court").

Because Defendant is a citizen of Vermont, "the State in which the action is brought," removal is improper under 28 U.S.C. § 1441(b).

CONCLUSION

\_\_\_\_\_Plaintiffs' Motion to Remand is GRANTED. The request for hearing is DENIED as moot.

SO ORDERED.

Dated at Brattleboro, Vermont this \_\_\_\_ day of March,  
2004.

\_\_\_\_\_  
J. Garvan Murtha, U.S. District Judge